

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 785 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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SARASWATI TRADING COMPANY
Versus
THE STATE OF GUJARAT AND ANOTHER

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Appearance :

MR VIRAT G POPAT for the Petitioner

MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for Respondent No.1

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 11/12/2006

ORAL JUDGMENT

1. One 'Saraswati Trading Company', through its Manager and Administrator – Patel Dalabhai Sonabhai is before this Courts. In the memo of the revision application

said Patel Dalabhai Sonabhai is described as 'applicant (original complainant)'. Prayer made in the revision application is:

“6.(b) To quash and set aside the order at Annexure-A dated 12/09/2006 passed by the Learned Additional Sessions Judge, Deesa at Banaskantha in Criminal Appeal No.30 of 2003.”

The learned Additional Sessions Judge, Banaskantha at Deesa was pleased to allow the appeal against the judgment and order passed in Criminal Case No.749 of 2001 by the learned 2nd Joint Judicial Magistrate First, Dhahera (“JMFC”, for short) dated 01.10.2003, whereby the appellant was held guilty of offence under Section 138 of the Negotiable Instruments Act, 1881 (“the Act”, for short).

The learned JMFC was pleased to hold that the accused – Chaudhari Govindbhai (Govabhai) Bechardas is guilty of an offence under Section 138 of the Act and awarded him 1 year's R.I., fine of Rs.5,000/- and in default, further 3 months R.I.

The learned JMFC was pleased to order compensation under Section 357 of the Criminal Procedure Code (“the Code”, for short) for a sum of Rs.7,90,000/-.

2. The complaint is filed by the manager/administrator

of a trading concern - 'Saraswati Trading Company'. It is not the case of the complainant that the said 'Saraswati Trading Company' is a 'legal entity', it is neither a registered partnership firm nor a company registered under the Companies Act. It is also not registered under any other law, so as to acquire a status of 'legal entity' in the eye of law. Once there is no status of 'legal entity', there is no question of such 'concern' being recognized by the Court of law for adjudication of its rights.

It is not the case of the complainant that 'Saraswati Trading Company' is a sole proprietorship concern and that the complainant is the proprietor of that concern.

Patel Dalabhai Sonabhai has described himself as a manager and administrator of the said trading concern, meaning thereby that Patel Dalabhai Sonabhai cannot have any personal interest in the affairs of 'Saraswati Trading Company', which is not a 'legal entity' in the eye of law and therefore, it has no existence.

3. Mr.Virat G.Popat, learned advocate for the petitioner vehemently submitted that Agricultural Produces Market Committee, Dhanera has issued a licence in the name of 'Saraswati Trading Company'. Xerox copy of

the same is placed on record.

This certificate, issued by Agricultural Produces Market Committee, Dhanera can not confer a status of 'legal entity' on Saraswati Trading Company and therefore, it is of no help to the present petitioner – original complainant. If at all that licence confers any right on the complainant, the petitioner may enjoy the same. But so far as an enforcement of right in the Court of law of concerned, the same can be only in accordance with settled principle of law.

4. Under the Act for taking cognizance of an offence, provision is made, i.e. Section 142 of the Act. Clause (a) of Section 142 of the Act provides that, 'no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque'.

It is true that cognizance can be taken on a written complaint, filed or made by payee or the holder in due course, but then the condition precedent is that, payee or holder in due course must be a 'legal entity'. Section 142 of the Act does not say that even if the payee or holder in due course is not a 'legal entity', a complaint can be filed by such entity or anybody on

behalf of such entity.

5. Learned advocate Mr.Popat relied upon a decision of this Court in the matter of **GEEKAY EXIM (INDIA) LTD. & ORS. VS. STATE OF GUJARAT & ANR.**, reported in 1997(3) GLR 2660. The learned advocate emphatically submitted that in paragraph No.7 of that judgment, the Court has held that, 'even in absence of any express authorization, a person or executive , representing the case of the legal entity like corporate body, company, firm etc. can initiate any legal proceedings like the one criminal complaint under the Act.' For ready perusal, paragraph No.7 is reproduced hereinbelow:

“7. Therefore, the only question that arises for consideration in both these matters is whether, in case of juristic person, a legal entity, special authorisation is required even if legal proceedings are initiated by principal officers in charge of management or by such persons who under law are recognised to represent such a body. Sec. 141 of the Act defines “Company” and the Explanation runs as under :

“Explanation :- For the purposes of this section -

- (a) “company” means any body corporate and includes a firm or other association of individual; and
- (b) “director”, in relation to a firm, means a partner in the firm.”

It is needless to say that a company is a juristic person, a legal entity. A company though is a legal entity does not have soul, mind, body and limbs to walk to Court for preferring a complaint. The dictates of common sense, practical wisdom, prudence and expedience impels the Courts in such a situation to allow a company to be represented by some person concerned with the affairs of the company. Similarly, in case of a firm also, though strictly not a legal entity for all purposes, but a legal entity for the purpose of this Act, has no act through some human agency connected with the affairs of the firm. In the normal course, such legal entities are managed by manager, partner, managing partner, director, managing director or principal officers like other executives in charge of affairs and administration. In my view, when the law expressly recognises the right of such persons and executives to represent interests of legal entity, like corporate body, company, firm etc., no special and express authorisation is required for initiating any legal proceedings like the one criminal complaint under this Act."

(emphasis supplied)

Learned advocate Mr.Popat missed sight of the fact that the decision says that a person or executive can represent interest of 'legal entity'. It is true that the judgment says that even if there is no special and express authorisation in favour of a person then also, a person can initiate any legal proceedings like the one criminal complaint under this Act. But then, the

condition precedent for that is that, 'there has to be a 'legal entity'.

In the present case, the difficulty is that there is no legal entity and therefore, the learned Additional Sessions Judge has rightly allowed the appeal and quashed and set aside the judgment and order of the learned JMFC.

6. Learned advocate Mr.Popat next relied upon a decision of the Hon'ble the Apex Court in the matter of M.M.T.C.LIMITED VS. MEDCHL CHEMICALS AND PHARMA PRIVATE LIMITED, reported in AIR 2002 SC 182. The learned advocate relied upon paragraph No.11 of the judgment, which reads as under:

"11 This Court has as far back as, in the case of Vishwa Mitter V/s. O.P. Poddar reported in (1983) 4 SCC 701, held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It has been held that no Court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case the

only eligibility criterion prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criterion is satisfied as the complaint is in the name and on behalf of the appellant company.

The emphasis is that the complaint is to be filed either in the name of or on behalf of the company and the presumption is that the 'company' is a company having a status of 'legal entity' under the appropriate law. The judgment does not say that the 'company' which does not have an existence in the eye of law, can have a 'right' which can be exercised or enforced in a Court of law.

7. In view of the aforesaid discussion, the present revision application, which is thoroughly misconceived, is rejected.

(RAVI R. TRIPATHI, J.)

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